

# INDIA

## TRADE SUMMARY

The U.S. goods trade deficit with India was \$22.9 billion in 2017, a 5.9 percent decrease (\$1.4 billion) over 2016. U.S. goods exports to India were \$25.7 billion, up 18.7 percent (\$4.0 billion) from the previous year. Corresponding U.S. imports from India were \$48.6 billion, up 5.6 percent. India was the United States' 15th largest goods export market in 2017.

U.S. exports of services to India were an estimated \$23.1 billion in 2017 and U.S. imports were \$28.7 billion. Sales of services in India by majority U.S.-owned affiliates were \$24.5 billion in 2015 (latest data available), while sales of services in the United States by majority India-owned firms were \$14.7 billion.

U.S. foreign direct investment (FDI) in India (stock) was \$32.9 billion in 2016 (latest data available), a 10.0 percent increase from 2015. U.S. direct investment in India is led by prof., scientific, and tech. services, manufacturing, and wholesale trade.

## OVERVIEW

The primary bilateral forum for discussing trade issues with India is the United States - India Trade Policy Forum (TPF), held annually and co-chaired by U.S. Trade Representative Robert Lighthizer and Minister of Commerce and Industry Suresh Prabhu, with senior-level intersessional meetings in between ministerial-level ones. The most recent TPF was held in October 2017 in Washington, D.C.

## TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

### Technical Barriers to Trade

In addition to discussing technical barriers to trade (TBT) matters with Indian officials under the TPF, the United States discusses TBT issues with India during Committee meetings at the World Trade Organization (WTO), as well as on the margins of those meetings.

#### *Toys*

On September 1, 2017, the Indian Ministry of Commerce and Industry announced a new measure, "Amendment in Policy Condition No. 2 to Chapter 95 of ITC (HS), 2017 – Schedule – 1 (Import Policy)." The new requirement, which went into effect immediately, requires all toy imports to be tested using a conformity assessment facility accredited by India's National Accreditation Board for Testing and Certification (NABL) to demonstrate compliance with newly updated Indian toy safety standards. The only such laboratories are located in India, and no laboratories were accredited at the time of implementation. Before the enactment of the measure, producers could test their products to the applicable ISO, ASTM, or EN toy safety standard at any laboratory accredited under the International Laboratory Accreditation Corporation (ILAC) system. U.S. manufacturers have reported significant increases in costs and delays. In some cases, certain products have been prevented from accessing the Indian market entirely due to a lack of testing capacity and approvals.

#### *Compulsory Registration Order for Electronics and Information Technology Goods*

In September 2012, India published the Electronics and Information Technology Goods Compulsory Registration Order (CRO), which requires electronic and information technology (IT) equipment to meet

Indian product safety standards by, among other things, being tested by a laboratory recognized by the Bureau of Indian Standards (BIS). Since the enactment of the original requirement, India continues to expand the list of products subject to the measure, which now covers 44 different types of electronic and information technology (IT) equipment. Most IT products receive certification under the International Electrotechnical Commission (IEC) System of Conformity Testing and Certification for Electrotechnical Equipment and Components (IECEE), making this secondary testing unnecessarily duplicative. In 2016, India permitted foreign laboratories to be recognized by BIS, but only if such labs were physically located in India.

In 2017, BIS also revoked previously approved CRO registrations on multiple IT products for what appear to be administrative or discretionary reasons rather than issues related to compliance with the safety standards. According to U.S. equipment producers, the unnecessary testing and registration requirements, as well as registration cancellations under the CRO, have caused significant disruption to supply chains and costly delays.

#### *Telecommunications Equipment - Security Regulations*

In 2009 and 2010, India promulgated a number of regulations negatively impacting trade in telecommunications equipment, including mandatory transfer of technology and source code as well as burdensome testing and certification requirements for telecommunications equipment. India removed most of these measures in response to international stakeholders' concerns, but is expected to implement regulations requiring the testing of all "security-sensitive" telecommunications equipment in India in April 2018. It is unclear whether India will have the domestic testing capacity to implement the testing criteria. U.S. officials continue to urge India to reconsider the domestic testing policy and to adopt the use of the Common Criteria Recognition Arrangement. In 2017, the United States raised concerns related to India's telecommunications security testing requirements bilaterally under the TPF and in the WTO TBT Committee.

#### *Food - Package Size and Labeling Requirements*

The government of India mandated standard retail package sizes for 19 categories of foods and beverages effective November 1, 2012, via amendment to the Legal Metrology (Packaged Commodities) Rules, 2011. This rule to date has not been notified to the WTO, nor has there been any reference to a specific comment period for domestic stakeholders since implementation. As the United States does not impose specific standards for packaging size, and U.S. package sizes tend to be in English rather than metric units, the list of package sizes effectively prevents many U.S. origin products from entering India. Attempts to import U.S.-origin products in the affected categories have resulted in rejection at the port of entry. These standards have a negative effect on trade, with numerous U.S. brands effectively excluded from the Indian market. The United States continues to raise concerns about these standards in various bilateral and multilateral fora in an effort to ensure that U.S. products have access to the Indian market.

#### *Foods Derived from Biotechnology Crops*

Biotechnology products must be approved by India's Genetic Engineering Appraisal Committee (GEAC) before importation or domestic cultivation. India's biotechnology approval processes are slow, opaque, and subject to political influences. Despite signs of progress, the GEAC's steps in 2017 towards approving a public sector, domestically developed genetically engineered (GE) mustard plant variety for commercial cultivation was further delayed pending additional government review; the government has yet to take a decision on its approval. Soybean oil and canola oil, derived from GE soybeans and canola, remain the only biotechnology food or agricultural products currently approved for import into the Indian market, and Bt cotton is the only biotechnology crop approved for commercial cultivation in India. This slow and

uncertain approval process continues to negatively impact product registrations needed to facilitate trade in biotechnology products. Without enhanced capacity for science based decision making, India's acceptance and approval of additional agricultural biotechnology products will remain limited.

In the event that additional biotechnology products are approved for import in the future, the labeling requirements for packages containing "genetically modified" foods remain unclear. Lack of clarity regarding jurisdictional authority between the Food Safety and Standards Authority of India (FSSAI) and the GEAC could also have negative effects on U.S. crops and products derived from biotechnology entering the Indian market. Also, the Ministry of Agriculture and Farmers Welfare (MAFW) has issued regulations that have significantly limited the incentive for research and development, as well as investment in the agriculture biotechnology sphere. These include the December 2015 Cotton Seed Price Control Order, the March 2016 Notification that established the maximum sale price of Bt cottonseed packets (including the royalty fee), and the May 2016 Licensing and Formats for GM Technology Agreement Guidelines.

### *Livestock Genetics*

The Department of Animal Husbandry, Dairying, and Fisheries (DAHDF) of the Ministry of Agriculture imposes restrictions on imports of livestock genetics and establishes quality standards. Importation of animal genetics also requires a "no objection certificate" (NOC) from the state government, import permission from the Directorate General of Foreign Trade, and an import permit from the DAHDF. The entire procedure for obtaining permission to import generally takes more than four months. Similarly, certain sanitary requirements are also restrictive, including animal disease regulations and testing requirements for imports of animal genetics. Neither the burdensome progeny testing nor the NOC are required of domestic producers of animal genetics. The United States discussed these requirements in technical level meetings of animal health experts held in November 2016 and August 2017 with the DAHDF. India has recently accepted the United States proposed veterinary health certificates for exports of in vivo derived bovine embryos, live bovine semen, and live equines.

### *Dairy Products*

India imposes onerous requirements on dairy imports. India continues to require that dairy products be derived from animals which have never consumed any feeds containing internal organs, blood meal, or tissues of ruminant origin. India has explained that its position is based on religious and cultural grounds. This requirement, along with high tariff rates, continues to prevent market access for U.S. milk and dairy product exports to India, one of the largest dairy markets in the world. In order to address India's religious and cultural concerns, in 2015, the United States proposed a labeling solution to allow for consumer choice between dairy products derived from animals that have or have not consumed feeds with ruminant protein. India has so far rejected that proposal, and the United States continues to press India to provide access to the Indian dairy market.

### *Alcoholic Beverage Standards*

In 2015 and 2016, India notified three different standards that apply to alcoholic beverages to the WTO, including the Food Safety and Standards (Food Additives) Regulations; the Food Safety and Standards (Alcoholic Beverage Standard) Regulations and the Food Safety and Standards (Food Imports) Regulations. Since then, revisions of all three regulations have been either notified to the WTO or published in The Gazette of India. The U.S. Government and U.S. industry representatives have provided comments on each these measures. The United States still has a range of potential concerns, including potential India-specific labelling requirements, certain product definitions, production method specifications, compositional requirements and ingredient limits, alcohol by volume limits, serving size criteria that are inconsistent with standard international practice, a limited list of approved additives, and maximum residue levels for many

chemical contaminants for which standards do not exist in Codex Alimentarius. The Alcoholic Beverage Standard has been implemented and published in the Gazette, and the United States continues to take every opportunity to raise its concerns in order to improve the restrictive approach to the regulation of alcoholic beverages in India.

### **Sanitary and Phytosanitary Barriers**

The United States has raised concerns about India's sanitary and phytosanitary (SPS)-related trade restrictions in bilateral and multilateral fora including the TPF, the WTO SPS Committee, and Codex. The United States will continue to make use of all available fora with a view to securing the entry into the Indian market of U.S. poultry, pork, and other agricultural products, including alfalfa hay, cherries, strawberries, and pet food. As part of the TPF, the United States and India met for a Plant Health bilateral meeting in July 2017 and an Animal Health bilateral meeting in August 2017.

#### *Food - Product Testing*

Importers have expressed concerns with FSSAI's batch-by-batch inspections at the port because of high cost and the detention of cargo for indeterminate periods of time, which is particularly costly with respect to perishable products. In June 2015, India announced a plan to transition its imported food inspection protocol from batch-by-batch inspections and sampling to a risk based approach. During discussions at the 2016 TPF, Indian officials noted that they are actively working to develop and implement a risk based inspection system and provided a general overview of their approach. The United States is collaborating with India on developing more specific guidance and a timeline to transition its inspections protocols.

On April 1, 2016, the Indian Central Board of Excise and Customs (CBEC) launched its Single Window Interface for Facilitating Trade (SWIFT) system. This is an initiative by the government of India to streamline clearances for inbound consignments and to improve the 'ease of doing business.' Along with SWIFT, the CBEC also introduced an Integrated Risk Management facility for partner government agencies, which is designed to ensure that consignments are selected for testing based on the principle of risk management – ensuring that foods that present actual food safety risks are tested while goods that pose little to no risk can avoid becoming subject to unnecessary procedures by inspection agencies. In the modified Food Import Regulations published September 2, 2016, FSSAI stated that a risk based random sampling will be followed wherein the samples will be drawn randomly based on the risk factor and compliance history of the importer identified by the newly introduced SWIFT system software. However, market sources report that the risk based inspection system is not yet fully operational as software linking with SWIFT and mapping by CBEC is still in process. Customs and FSSAI officials are working together in this evolving process and hope to fully implement the system in the coming years.

#### *Food - Product Approval*

FSSAI's product approval process has been under intense media and political scrutiny since August 2015 when the Supreme Court of India upheld an earlier decision by the High Court of Bombay that FSSAI did not have the legal authority to maintain its product approval regime. FSSAI stopped issuing product approvals in order to come into compliance with the Supreme Court's decision and is seeking a new approach to regulate new food and beverage products. On October 4, 2016, FSSAI published its new draft regulation called the "Food Safety and Standards (Approval for Non-Specified Food and Food Ingredients) Regulations, 2016." On September 11, 2017, FSSAI published the final Regulation on product approval called the "Food Safety and Standards (Approval for Non-Specified Food and Food Ingredients) Regulations, 2017. The final regulation lists the categories of food or food ingredients, mainly novel foods, requiring approval. Despite the final Regulation being in place, the pathway to product approval remains non-transparent. Because the requirements and process for new product approvals remain uncertain, FSSAI

could effectively block market innovations, product launches, and affect U.S. trade by not approving products for unspecified reasons.

### *Pork*

In November 2015, India released a revised universal veterinary health certificate for import of pork and pork products detailing requirements for processing facilities, veterinary drug residues, and animal disease restrictions. In September 2016, the United States proposed a letterhead certificate to supplement the U.S. standard veterinary health certificate with additional attestations that address India's universal certificate. At the 2017 TPF, both sides agreed that technical discussions on the export of pork to India were at an advanced stage. In October 2017, the United States responded to India's request for more information, and India assured expedited examination of the information with the goal of finalizing an export certificate as soon as possible. The United States continues to work with the government of India to resolve the issue.

### *Poultry*

Since 2007, India has banned imports of U.S. poultry, live swine, and related products due to the detection of low pathogenic and highly pathogenic avian influenza in the United States. The ban is applied on a countrywide basis, and thus does not take into account regional conditions including areas free of avian influenza in the United States. The United States repeatedly raised concerns about India's measures in the WTO SPS Committee, discussed them bilaterally with India, and in 2012, filed a dispute settlement case at the WTO. The panel found and the Appellate Body affirmed that India's avian influenza measures breach numerous provisions of the WTO SPS Agreement. On June 19, 2015, the WTO Dispute Settlement Body (DSB) adopted the panel and Appellate Body reports.

On July 17, 2015, India indicated it would bring its measures into compliance with the adverse findings. The United States and India agreed that India had until June 19, 2016, to comply with the DSB's recommendations and rulings. India did not take any action by that date, and on July 7, 2016, the United States requested the authorization of the DSB to suspend concessions because India had failed to comply with the recommendations and rulings of the DSB. On July 18, 2016, India objected to the level of suspension of concessions. At the DSB meeting on July 19, 2016, this matter – the appropriate level of concessions to be suspended – was referred to arbitration.

On March 2, 2017, India informed the DSB that it had taken all required measures to comply with the DSB's rulings and recommendations in this dispute and insisted the United States terminate the arbitration proceedings for the suspension of concessions. On April 6, 2017, India requested the establishment of a compliance panel. At its meeting on May 22, 2017, the DSB agreed to refer the matter raised by India to the original panel, if possible. The United States responded to India's claim of compliance before the WTO during the fall and winter of 2017. The United States and India presented arguments before the WTO panel in early December 2017.

On July 8, 2017, India announced that it had adopted a new measure for avian influenza. The United States has concerns with how this measure will operate, and has attempted technical engagement with India concerning this new measure, and subsequent amendments India made to it.

In November 2017, Indian officials visited the United States to discuss the health certificate for poultry and poultry products and conducted an audit visit. The United States continues to work with India to open market access for U.S. poultry products into India consistent with the WTO ruling. Until then, the United States considers the dispute unresolved.

## *Plant Health*

India maintains zero tolerance standards for certain plant quarantine pests, such as weed seeds and ergot, that are not based on risk assessments and result in blocked imports of U.S. wheat and barley. Bilateral discussions to resolve these issues, including at the senior official level, have achieved little success to date. India's requirement of methyl bromide (MB) fumigation at the port of origin as a condition for the import of pulses is not feasible in the United States, because of the U.S. phase-out of MB due to its demonstrated negative impact on the environment. In August 2004, the United States requested India to permit entry of U.S. peas and pulses subject to inspection and fumigation at the port of arrival. India has granted a series of extensions allowing MB fumigation on arrival, but has offered no permanent solution. On December 29, 2017, India's Ministry of Agriculture confirmed the extension of the fumigation-upon-arrival waiver for U.S. peas and pulses, including chickpeas, until June 30, 2018. While these extensions have avoided formal bans on trade, they are frequently last minute and create uncertainty for U.S. exporters.

## **IMPORT POLICIES**

The United States has actively sought bilateral and multilateral opportunities to open India's market, and the government of India has pursued ongoing economic reform efforts. Nevertheless, U.S. exporters continue to encounter tariff and nontariff barriers that impede imports of U.S. products into India.

### *Tariffs and other Charges on Imports*

In July 2017, India implemented the Good and Services Tax (GST) system in an effort to unify Indian states into a single market and improve the ease of doing business. The GST is designed to simplify the movement of goods within India, but it also applies to imports. Before the GST implementation, imports could be subject to an "additional duty," a "special additional duty," an education cess (tax), state level value added or sales taxes, the Central Sales Tax, and/or various other local taxes and charges. The new GST system subsumed a number of these charges, including the "additional duty" and the "special additional duty," that were previously levied on imports into the single GST. The tariff (or "basic customs duty") continues to be assessed on imports separately and has not been incorporated into the GST.

The GST is a two-part system: a State and Central GST that is levied simultaneously on every transaction of goods and services in India, and an "Integrated GST" that covers goods and services sold between all Indian states. Both the Integrated GST and the GST are applied to imported goods. Under the new system, goods and services are taxed under four basic rates – 5 percent, 12 percent, 18 percent and 28 percent. Some items, like vegetables and milk, have been exempted from the GST. The price of most goods and services increased in the immediate aftermath of the tax, and as expected, economic growth slowed for several months following GST implementation.

The GST does not apply to alcoholic beverages, and U.S. stakeholders have identified various state-level taxes and other charges on imported alcohol that appear to be higher than those imposed on domestic alcohol.

As part of its computerization and electronic services effort, in 2009, India initiated a web based Indian Customs Electronic Commerce/Electronic Data Interchange Gateway, known as ICEGATE (<http://icegate.gov.in>). It provides options for calculating duty rates, electronic filing of entry documents (import goods declarations) and shipping bills (export goods declarations), electronic payment, and online verification of import and export licenses. However, while India publishes applied tariffs and other customs duty rates applicable to imports, no single publicly available official publication includes all relevant and up to date information on tariffs, fees, and tax rates on imports. India adjusts applied tariffs in numerous ways that make it difficult to determine the current applied rate, including in the annual budget as well as